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HOUSE OF COMMONS PROCEDURE: ITS REFORM

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HOUSE OF COMMONS PROCEDURE: ITS REFORM*

ISSUE DEFINITION

Parliamentary procedure is the set of rules governing the activities of an assembly. These rules can be in the form of sections of the Constitution or Acts of Parliament. For example, section 48 of the Constitution Act, 1867, sets the quorum in the House of Commons at 20 Members, while the Speaker of the House of Commons Act (R.S.C. 1970, Chapter S-13) outlines the procedure to be followed when the Speaker of the House is unavoidably absent. However, most of the rules are set out in the Standing Orders, with any omissions or shortcomings supplemented by reference to past procedure in the House of Commons and to the Speaker's rulings. These rulings are codified in Beauchesne's Parliamentary Rules and Forms or scattered throughout the Journals of previous sessions.

Far from being a series of unchanging rules, procedure (particularly as set out in the Standing Orders) is constantly evolving, as reforms attempt to adapt the capacities of Parliament to a changing environment. This Issue Review identifies recent trends and developments in Parliamentary procedure, and assesses their impact on the evolving role of Parliament.

BACKGROUND

The efficiency of Parliament, viewed primarily as a processor of government legislation, was the dominant objective of procedural reform from before the turn of the century until the early 1980s. The need for improved efficiency was a product of longstanding

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trends in government which accelerated steadily during this period. The rise of the modern interventionist state brought with it a vast increase in the volume and complexity of government legislation placed before Parliament. This created pressures for government legislation to be accorded priority as a matter of business, and for the streamlining of procedures governing the conduct of all legislative business.

Successive reforms increased the speed of Parliament's legislative work, but substantially reduced the capacity of individual members to make independent contributions. The substantial reduction in the amount of House time available for the consideration of Private Members' legislation; the institution and subsequent tightening of time limits on speeches; the practice of allocating a specified amount of House time for the debate of any given bill; and the establishment of time limits on oral questions are but random instances of a general trend.

The focus on efficiency continued to dominate procedural reform until very recently. Reforms in 1968, for example, reduced demands on House time by moving the in-depth review of bills following second reading and the scrutiny of budget estimates off the floor of the House (where they had been performed, often at protracted length, in Committee of the Whole) and into revamped standing committees. At the same time, and also in quest of greater efficiency, a strict timetable was established for the adoption of the estimates, supplementary estimates and interim supply. While the new arrangements enhanced the efficiency of the House, they increased the sense of futility among backbenchers, who remained subject to tight party discipline imposed by the Whips, and whose Private Members' bills had little chance of being adopted.

It was not until the mid-70s that concerns about the effectiveness of Parliament began, among a growing group of observers, to embrace wider considerations than merely the elimination of legislative bottlenecks. In 1976, Auditor General Macdonnell delivered a highly publicized warning that Parliament was in danger of losing control of the public purse, prompting a series of proposals for more meaningful scrutiny of government spending proposals and for enhanced committee scrutiny of the activities of Crown corporations. Proposals of the Business Council on

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National Issues (1979 and 1982) and of the Royal Commission on Financial Management and Accountability (1979) focused, also, on the need to restore the influence of Parliament.

A number of academic works of this period highlighted the above concerns. Parliament was portrayed as a body of generalists increasingly overpowered by the complexity of modern legislation, displaced by expert bureaucrats and organized interest groups competing for influence on government, and reduced by party discipline to the role of the ritual rubber stamping of initiatives originating elsewhere.

PARLIAMENTARY ACTION

A. Provisional Amendments to the Standing Orders of the House of Commons (December 1982)

In the context of new concerns about the effectiveness of Parliament, a special committee was empowered in May 1982 to examine comprehensively the Standing Orders and Procedure of the House. Amendments to the Standing Orders recommended by the committee established such worthwhile innovations as a regular parliamentary calendar and, in the continuing pursuit of efficiency, reduced the maximum length of individual speeches from 40 to 20 minutes and of speeches at the report stage to 10 minutes.

More significant, however, were committee recommendations intended to strengthen the standing committees as a means of enhancing Parliament's effectiveness in scrutinizing and, when necessary, altering legislation. The resulting reforms, put into effect provisionally in December of 1982, reduced the size of committees to between 10 and 15 members in order to foster the growth of specialized expertise, heightened the continuity of membership by restricting substitutions to a list of formally designated substitutes, provided for the automatic referral of departmental and Crown corporation annual reports to the appropriate committee, and stipulated that committee reports could require the government to provide "a comprehensive response" within 120 days of their being tabled.

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In addition to initiating the reforms just described, the Special Committee on Standing Orders and Procedure gave extensive attention to the problem of accountability, particularly as it relates to Parliament's scrutiny and oversight of government expenditures. It was proposed that the Public Accounts Committee be supplemented by three new scrutiny committees, and that the committee system be further strengthened through greater functional specialization, the provision of more professional staff, and more extensive use of subcommittees. These recommendations were not, however, considered by the House prior to the dissolution of the thirty-second Parliament in 1984.

B. The Parliamentary Task Force on Reform of the House of Commons

A Task Force on the Reform of the House of Commons, announced in the Speech from the Throne of 5 November 1984, was created on 5 December of that year. This seven-member special committee (Mrs. Bourgault, Messrs. Blaikie, Cooper, Ellis, Friesen, McGrath and Ouellet) was appointed to examine the powers, procedures, practices, organization and facilities of the House of Commons, bearing in mind the balance between the respective constitutional responsibilities and roles of the House of Commons and the Government. The Hon. James McGrath was elected chairman of the committee.

After tabling, on 20 December 1984, a first report containing many of the recommendations set out in reports number 4 to 10 of the special committee of the previous Parliament, the Committee continued its work during the winter. It tabled a second report, containing original proposals largely relating to immediate concerns of Members and House operational matters, on 26 March 1985. Among the more noteworthy of these were proposals for the transfer from the Department of Public Works of responsibility for planning and maintenance on the Hill to a new officer responsible directly to Parliament, and for the implementation of an electronic voting system in the House.

In its third report, tabled later in 1985, the Committee presented a series of recommendations which were the basis of the present

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committee system, and which were related to concerns about the effectiveness of Parliament:

> The purpose of reform of the House of Commons in 1985 is to restore to private members an effective legislative function, to give them a meaningful role in the formation of public policy and, in so doing, to restore the House of Commons to its rightful place in the Canadian political process. (Special Committee on the Reform of the House of Commons, Third Report, June 1985, p. 1).

The McGrath Committee recommendations included changes to make the committee structure more closely parallel the departmental structure of government, the enhancement of committee powers for obtaining information from departments, and the transfer of the detailed scrutiny of legislation to legislative committees, which would allow standing committees to focus on policy matters and the review of departmental estimates. It was also recommended that the size of committees be reduced to (normally) seven members, that the control of members over the selection of substitutes be increased, and that committees be furnished with independent budgets and the authority to hire specialized staff. It was recommended, further, that committees be authorized to review non-judicial Order in Council appointments (or, in some cases, nominations for appointment) and that powers of regulatory review be strengthened.

The scope of the Committee's third report was by no means confined to the committee structure. Following in-depth discussion, the Committee concluded that votes on a wide range of issues need not be seen as matters of confidence. While procedural change was not advocated, the Committee called for greater flexibility by governments and opposition parties in the exercise of party discipline. The Committee also advocated reforms which would permit Private Members' bills to contain financial provisions and increase the likelihood (which had become minimal) that such bills (and motions) would actually be voted on.

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C. Action Taken on the Reports

1. Reforms Adopted in June 1985

A major step in implementing the recommendations contained in the first report was taken on 27 June 1985. On that day, the House adopted legislation amending the composition of its Board of Internal Economy to ensure representation from both sides of the House. The new Board of Internal Economy is composed of the Speaker, the Deputy Speaker, two ministers selected by Cabinet, the Leader of the Opposition or his representative, two Government Members and two Opposition Members, one of whom represents the Official Opposition.

Among the provisional changes to the Standing Orders also adopted was a new procedure for electing the Speaker, designed to put the choice in the hands of the Members, rather than in the hands of the Prime Minister. Voting is secret and the Head of the Government is not permitted to propose a candidate; Ministers and party leaders are not eligible to be candidates. The process as originally adopted could have been a lengthy one if there were many candidates in the running; the election of a Speaker required an absolute majority of votes, with successive ballots, (each involving the elimination only of candidates with the lowest number of votes) being held until a candidate obtained an absolute majority. This new procedure was first applied in September 1986 when the House elected the Hon. John A. Fraser as its Speaker on the eleventh ballot.

As well, legislative committees, rather than standing committees, were made responsible for reviewing bills in detail. A legislative committee is composed of at least 20 but not more than 30 Members, not counting the Chairman. It must meet in the two sitting days following a bill's second reading. Not only can it review the draft legislation referred to it, it is also empowered to conduct an investigation on the subject matter of the bill. The committee is authorized to call witnesses, to request documents and files and to meet while the House is either sitting or adjourned. Like a standing or special committee, it is empowered to retain the services of experts and professional, technical and support staff when it so requires. After

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reporting on the bill that has been referred to it, the legislative committee ceases to exist.

2. Reforms Adopted in February 1986

Following lengthy negotiations among the parties, a new series of amendments to the Standing Orders of the House of Commons came into force on 24 February 1986. These amendments added several important new chapters to the Standing Orders and were the most significant changes since 1968. They were in force until December 1986, at which time their application was extended to 15 April 1987. (As discussed below, they were made permanent, with minor changes, on 3 June 1987.)

The new Standing Orders provide for the review of delegated legislation and of Order in Council appointments. The then Standing Joint Committee on Regulations and other Statutory Instruments (re-named the Standing Joint Committee for Regulatory Scrutiny in December 1987 and now the Committee on Scrutiny of Regulations) was empowered to report to the House recommending the disallowance of a statutory instrument which it has studied. Such a report is deemed adopted by the House and the statutory instrument is consequently deemed repealed when a notice of motion for adoption of the report is placed on the Notice Paper, unless the House rejects this motion within the next 15 sitting days.

A decision was also made to put an end to the near total latitude enjoyed by the government concerning Order in Council appointments. Under the new Standing Orders non-judicial Order in Council appointments are automatically referred to the appropriate standing committee. The same pattern is to be followed if a Minister tables in the House the draft appointment of a particular individual. In such cases, the appropriate committee has 30 sitting days to call the appointee or nominee to appear before it so that it may examine his or her qualifications and competence to perform the duties of the post mentioned in the Order in Council or draft. Committees can report recommendations to the House but do not (as does the Senate in the U.S. system) have the power of confirmation.

The rules governing Private Members' business were rewritten to ensure that the House reaches a decision in relation to such business rather than merely discussing it. At the beginning of the session, the

Clerk conducts a random draw to establish an order of precedence for 20 separate items. The new Standing Committee on Private Members' Business then meets to select, after the necessary consultation, and according to their importance, not more than six items which will be designated as votable items. The report of the committee is then tabled in the House and deemed adopted. The selected items receive no more than five hours of consideration at the second reading stage. This system has the advantage of forcing the House to rule on contentious issues.

The Standing Orders of 24 February 1986 created 25 standing committees, most of whose mandates were defined in terms of departmental policy areas, and three joint committees. Committee powers to obtain information, including the full array of governmental policy documents, draft legislation, expenditure plans, and evaluation studies, were enhanced. As well, the size of committees was reduced to (normally) seven members, so that the typical members would sit on fewer committees and could focus on them more intensively. Members were given more control over the selection of replacements in the event of their inability to attend meetings. Committees were also provided with independent budgets (with funds being allocated, subject to ratification by the Board of Internal Economy, by a Liaison Committee of chairmen) and the authority to hire specialized staff.

The 1986 reforms also placed new constraints on the obstruction of House business: rules governing the division bells were changed (a belated response to the famous bell-ringing episode of March 1982), and a time-limit was placed on emergency debates. Noteworthy among the numerous other changes introduced in 1986 was the deletion of reference to Great Britain at the beginning of the Standing Orders: Speaker's rulings must now be based on the precedents of the House of Commons and on "parliamentary tradition in Canada and other jurisdictions."

3. Fine-Tuning the Reforms, 1986-1989

The complex procedure governing the examination of Private Members' Business made a technical adjustment necessary to accommodate the absence of Members whose business was scheduled for debate. Through a special order dated 18 December 1986, the House authorized the Speaker,

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with the permission of the Members involved, to arrange an exchange of positions in the order of precedence of Private Members' Business. In its third report, the Standing Committee on Elections, Privileges and Procedure ratified this idea.

In its fourth report, dated 7 April 1987, the Committee proceeded to assess the experience of the past year or so. On the basis of responses by 140 members to a detailed questionnaire, it concluded that there was:

> ... overwhelming support for the continuation of the present reforms. While there were some who were concerned that the new provisional rules had not provided Members with sufficient opportunity for input into the policy-making process, there was general support for many of the changes. However, some standing orders were the subject of criticism. [...] The "New House" predicted by the Reform Committee [McGrath] is well under construction ... (Votes and Proceedings of the House of Commons, 7 April 1987, p. 705).

After declaring itself in favour of the new procedure for the election of the Speaker of the House, the Committee suggested various modifications aimed at reducing the number of candidates both before and during the vote. While the review of activities of standing committees was favourable, the Committee recognized that scheduling conflicts between legislative committees posed a problem. It responded by proposing that no more than six legislative committees be authorized to sit at any one time.

After several extensions to permit continuing discussion, on 3 June 1987 the House unanimously accepted a motion that currently applying special orders and provisional amendments to the Standing Orders be made permanent, along with a number of revisions. Among these were provisions that standing committees shall not sit at the same time as legislative committees dealing with bills affecting their mandated department; that legislative committees take precedence over others while the House is sitting, while other committees (as ranked by the Chief Government Whip) take precedence during periods of adjournment; that the time allowed for preparation of a comprehensive government reply to a committee report be extended from 130 to 150 days and that a Member moving an item of Private

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Member's Business may speak for 20 minutes rather than 10. Also, appeals of Speaker's decisions concerning emergency debates were prohibited.

On 5 April 1989, the House adopted amendments to the Standing Orders combining standing committee mandates so as to reduce the number of regular standing committees from 25 to 19, excluding the striking committee, standing joint committees and special committees. The 27 September 1989 creation of the Standing Committee on Multiculturalism and Citizenship increased the number to 20. The reduction in the number of committees was intended to address two problems apparent during the previous Parliament: scheduling conflicts and heavy burdens imposed on the time and energy of Members by multiple committee workloads. The effectiveness of this strategy appears to have been undermined, however, by increases in the size of many committees to 14 members.

D. Recent Developments and Concluding Observations

Recent changes have been of a housekeeping nature, relating to matters such as Monday sitting hours, the name of the Standing Committee on Privileges and Elections, the publicizing of procedures governing petitions for private bills, and the clarification of the mandate of the Standing Joint Committee for the Scrutiny of Regulations. More recently, on 10 May 1990, the procedure governing the selection of Private Members' Bills for debate was altered (provisionally, until the last sitting day of December 1990) to prevent Members from proposing multiple items in order to increase their chance of having one item selected. Most recently, on 5 October 1990, the Striking Committee presented to the House a report proposing standing committee membership lists which would have reduced committee sizes to 8-10 members, and calling for greater reliance on sub-committees. As of this writing, however, these proposals have not been adopted.

The consequences of parliamentary reform, particularly when it is as wide-ranging as that of 1985 and 1986, require the elapse of considerable time before becoming fully apparent. It is not premature, however, to identify the new procedure for the election of the Speaker as a

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success: while the procedure employed in 1986 drew criticism for the length of time required for the election, and was subsequently modified, there has been no criticism of the fact that the Speaker is now freely elected by a method clearly insulated from governmental or other partisan influence.

A final verdict concerning the reforms will, however, have to await clear evidence of the impacts of the new committee system. While a small number of active committees have achieved discernible influence on policy, the overall record of the committees has been uneven and the widened powers of the committees have appeared, in some instances, to foster rather than to discourage adversarial partisanship among Members. If the impact of committees on the policy process remains unclear, it is also unclear to what extent an investment of Members' time in committee work pays political dividends. Perceptions about this will be important in determining the ultimate significance of the new committees.

CHRONOLOGY

5 November 1982 - In its third report, the Special Committee on Standing Orders and Procedure created on 31 May 1982 recommended several changes in the Standing Orders for a one-year trial period. The Report was adopted by the House on 29 November. The proposed changes came into effect on 22 December 1982 for a one-year trial period, and were extended (with minor amendments) on 19 December 1983 and 7 December 1984. No action was, however, taken on further reports of this Committee.

20 December 1984 - The first report of the Parliamentary Task Force on Reform of the House of Commons, created on 5 December 1984, (McGrath Committee) was tabled.

26 March 1985 - The second report of the task force was tabled.

18 April 1985 - The Hon. Ray Hnatyshyn made a statement on the reform of Parliament.

1985 - The third report of the task force was tabled.

27 June 1985 - Amendments to the Standing Orders pertaining to the speakership, the Board of Internal Economy and legislative committees were adopted on a provisional basis.

13 February 1986 - The House of Commons adopted a series of new provisional amendments to the Standing Orders which were to take effect on 24 February 1986.

30 September 1986 - The first election of the Speaker by secret ballot resulted in the election of the Hon. John A. Fraser.

14 April 1987 - The application of the provisional Standing Orders was extended to 29 May 1987.

3 June 1987 - The provisional Standing Orders (with minor revisions), as well as current special orders and a package of minor further amendments, were adopted for incorporation into the permanent Standing Orders.

5 April 1989 - The Standing Orders were amended to reduce the number of Standing committees from 25 to 19.

27 September 1989 - The Standing Committee on Multiculturalism and Citizenship was created, increasing the number of regular standing committees to 20.

10 May 1990 - Provisional amendments made the draw for selecting Private Members' Bills for debate a draw of Members' names, rather than items, thus removing the incentive for one Member to propose multiple items.

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